

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

ERIC DEWITT,)	
)	2:03-cr-0202-LRH-PAL
Petitioner/Defendant,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent/Plaintiff.)	
)	
_____)	

Presently before the Court are Petitioner/Defendant Eric Dewitt's Motion to Vacate, Set Aside or Correct Sentence brought pursuant to 28 U.S.C. § 2255 (#65¹). The Government has filed an Opposition (#68).

On January 15, 2004, Petitioner/Defendant was sentenced to 84 months incarceration after pleading guilty to Carjacking, Aiding and Abetting, 18 U.S.C. § 2119 & 2, and being a Felon in Possession of a Firearm, 18 U.S.C. § 922(G). In his current motion, Petitioner challenges his sentence on the grounds that the Federal Sentencing Guidelines were wrongly applied to him as they are now discretionary, rather than mandatory. *United States v. Booker*, 543 U.S. 220 (2005).

However, *Booker* does not apply retroactively to cases on collateral review, meaning that it does not apply to convictions that became final prior to its publication. *United States v. Cruz*, 423

¹ “(#__)” refers to the court's docket number.

1 F.3d 1119 (9th Cir. 2005). Even if it did apply retroactively, Petitioner's motion falls outside the
2 one-year time limit within which a defendant must file a motion to vacate, set aside, or correct
3 sentence pursuant to 28 U.S.C. § 2255.

4 Petitioner also argues that his sentence should be reduced because he has completed several
5 prison programs aimed at furthering his rehabilitation. Although the court applauds Petitioner's
6 desire to better himself, such actions do not bear on the validity of his sentencing, and such issues
7 are outside the jurisdiction of this court. Therefore, his motion will be denied.

8 IT IS THEREFORE ORDERED that Petitioner/Defendant's Motion to Vacate, Set Aside or
9 Correct Sentence brought pursuant to 28 U.S.C. § 2255 (Dockets No. 68) is DENIED.

10 IT IS SO ORDERED.

11 DATED this 27th day of July, 2006.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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